

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA

CHARLES R. BYARD,

Plaintiff,

v. // CIVIL ACTION NO. 1:11CV83
(Judge Keeley)

VERIZON COMMUNICATIONS, INC.,
VERIZON WEST VIRGINIA, INC.,
ANDREA L. CUSTIS, VICTORIA L.
BOSTON, CORBY MILLER and
MARY FREDERICK,

Defendants.

ORDER

GRANTING PLAINTIFF'S MOTION TO REMAND [DKT. NO. 26], AND DENYING
AS MOOT DEFENDANTS' MOTIONS TO DISMISS [DKT. NOS. 3, 29, 32]

The defendants, Andrea L. Custis and Victoria L. Boston, removed this case from the Circuit Court of Harrison County, West Virginia, on the grounds that the claims of the plaintiff, Charles R. Byard ("Byrad"), are completely preempted by the Labor Management Relations Act of 1947, 29 U.S.C. § 185 ("LMRA"), and the Employee Retirement Income Security Act, 29 U.S.C. § 1001, et seq. ("ERISA").

Byard moved to remand this case on the grounds that his claims are not completely preempted. In a Memorandum Opinion and Order entered this date in the case of Brosius v. Verizon Communications Inc., et al., No. 11CV38 (N.D.W. Va.), the Court explains its

ORDER

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reasons for remanding that case to the Circuit Court of Harrison County, West Virginia. Other than the identity of the plaintiff and the inclusion of a claim for fraud, the material considerations of this case are indistinguishable from the material considerations addressed in Brosius.

The legal principles set forth in Brosius compel the Court to conclude that, at bottom, none of Byrad's claims is preempted either by the LMRA or ERISA. Accordingly, the Court **GRANTS** Byrad's motion to remand (dkt. no. 26), **DENIES AS MOOT** the defendants' motions to dismiss (dkt. nos. 3, 29, 32), and **REMANDS** this case to the Circuit Court of Harrison County, West Virginia.

It is so **ORDERED**.

The Court directs the Clerk to transmit copies of this Order to counsel of record, and to mail a copy to the Circuit Court of Harrison County, West Virginia.

DATED: July 29, 2011.

/s/ Irene M. Keeley
IRENE M. KEELEY
UNITED STATES DISTRICT JUDGE